IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 25 of 1988
Date of decision 11.10.2006

Smt. Raj Kumari and others .. Appellants

Versus

Ravinder Kumar and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr.RS Sihota, Advocate for the appellants
Mr. Sanjay Bansal, Advocate for respondent no.2.

M.M.Kumar, J.

This appeal filed under Section 100 D of the Motor Vehicles Act, 1939 (for brevity 'the 1939 Act') is directed against the award dated 30.10.1987 passed by the Motor Accident Claims Tribunal, Faridabad (for brevity 'the Tribunal"). The widow of one Jaibir singh who is stated to have died in a vehicle accident on 16.7.1985 alongwith four minor children had made the claim. The accident had occurred on 16.7.1985. Shri Jaibir Singh, deceased was aged a bout 31 years and was driving truck no. HRC 8253 alongwith 45 other workers. The accident had occurred on 16.7.1985 when they were going to Hasanpur near village Jharsaintli on the main Delhi- Mathura road. It has been alleged that driver- respondent no.1 Ravinder Kumar had driven the truck rashly and negligent at a very high speed. As a result the truck turned turtle. The driver jumped out and was able to save himself and all the 45-46 workers traveling in the truck received injuries whereas Jaibir Singh, deceased had received fatal injuries. He was declared dead at the Civil Hospital, Ballabagarh where he was removed on the same day.

On the crucial issue as to whether the accident was caused by Driver-respondent no.1 on account of his rash and negligent driving, the Tribunal found that the rash and negligent driving of the truck by its driver Ravinder Kumar-respondent could not be proved. Accordingly, the issue was decided against the

claimant- appellants. It has however, been held under issue no.2 that the claimant-appellants who are the legal heirs of deceased Rajbir Singh and under issue no.3, the claimant- appellants have been granted the relief under Section 92-A of the Act on account of the death of Jaibir Singh. The Tribunal has further held that the delay in filing the claim petition deserved to be condoned as Smt. Raj Kumari has filed an affidavit explaining the delay for filing the petition on 10.10.1986 which is after a period of more than six months whereas the accident had taken place on 16.7.1985. The Tribunal has awarded a sum of Rs. 15,000/- in favour of the claimant- appellants against the respondents jointly and severely with costs alongwith interest @ 12 percent p.a. w.e.f. The date of filing of the application i.e. 10.10.1986.

The analysis of the evidence by rejecting the version given by the various witnesses has been made by the Tribunal in paras 5,6,7 and 8 which reads as under:

> " 5. Dr. Suman Bishnoi, PW 1 has proved the post mortem report Ex.P.1. She conducted autopsy on the dead body of Jaibir singh on 17.7.1985. In her opinion, death was due to shock and hemorrhage and injuries to vital organs. In her cross-examination, she has stated that there was no crush injury on the body of the deceased.
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> 6. Smt. Raj Kumari, one of the petitioners, came in the witness box as PW 2. She has stated that her husband died in a road accident. She is not an eye witness to the accident.
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> 7. Murari Lal PW 3 has stated that Jaibir Singh died in a road accident on 16.7.1985 that he was also present inside the truck at the time of accident but he does not know as to how the truck met with an accident . Further, that they had boarded the truck from the gate of the factory; that there were 40/50 workers inside the truck and that they had gone without the consent of the

management. He has further stated that he could not tell the speed of the truck when it met with an accident nor does he know the name of the driver. The evidence of this witness is of no help to the petitioners nor does it prove the alleged rash or negligent driving on the part of respondent no.1. This witness does not even know the name of the driver. He has frankly stated that he does not know as to how the truck met with an accident. He could not even tell the speed of the truck when it met with an accident. His evidence is thus of no help to the petitioners.

8. Hirdey Narain PW 4 is also stated to be traveling in the same truck. It is the case of the petitioners that this witness got a case registered against the driver of the truck with the police station, City Ballabgarh. But the, evidence of this witness does not help the petitioners in any manner. While stating that he was also sitting in the truck, he has added that he did not know as to who got the case registered about the accident. He goes no to say that he did not make any statement to the police; that he did not know whether any other occupant of the truck was joined in the investigation by the police or not that the police had come there of its own; that the police did not talk to him and that he remained unconscious for about half an hour. He has again stated that he did not know as to how the accident took place. He could not say as to what was the speed of the truck when it met with an accident.

This witness is said to be complainant but then his evidence does not help the petitioners in any manner. His evidence does not correct the respondent no.1 with the alleged rash or negligent driving of the truck at the time of accident. In this manner, the first information report Ex.P.2 has not been proved on record.

> The signatory to the first information report; namely Hirdey Narain having resiled, the alleged rash or negligent driving on the part of Ravinder Kumar respondent is not proved on the record."

The Tribunal also rejected the submission made by the counsel; for the claimant- appellant for accepting the statement made by Hirdey Narian, PW 4 which was produced before the Court as Ex.P.4. It is appropriate to mention that Hirdey Narain, PW 4 had appeared in the Court of Judicial Magistrate, Faridabad in the criminal trial initiated against the driver- respondent no.1 Ravinder Kumar. The observations of the Tribunal are available in para 9 which reads as under:

> " The learned counsel for the petitioners has, however , rankly conceded that the petitioners have failed to prove this issue. He, however, made one submission. According to him the statement of Hirdey Narain PW 4, Ex.P.4 made in the Court of Judicial Magistrate, Faridabad should be read in evidence and, as it is, the same proves the rash and negligent driving of the truck by Ravinder Kumar, respondent. In my opinion, his submission is altogether without merit. First of all the said statement was never put to Hirdey Narain PW when he was examined in this Court. Secondly, as is evident from the statement Ex.P.4, the witness was never cross-examined as his cross-examination was deferred on the request of the accused of that case. The petitioners have not cared to tender into the evidence the complete statement of Hirdey Narain PW recorded by the Court of Judicial Magistrate, Faridabad inspite of the plea now raised by their learned counsel. Thus, the statement Ex.P4 referred to by the learned counsel for the petitioners is of no avail to the petitioners and the same is accordingly ignored."
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> Mr. Sihota, learned counsel for the claimant- appellant has drawn

my attention to the order dated 19.7.2006 passed by this Court in the instant appeal showing that the record of the criminal case No. 76/2 titled as State v. Ravinder Pal instituted on 24.10.1986/ 11.5.1987 in case FIR No. 179 dated 16.7.1985 P S City Ballabgarh under Sections 277, 337 AND 304 A IPC was called. The afore-mentioned record has been received. A perusal of the record shows that case FIR No. 179 was registered on 16.7.1985 at 4.40 PM and challan against the accused Driver- respondent no.1 Ravinder Kumar was presented in the Court. On the statement made by Hirdey Narain son of Mahi Pal Ram the afore-mentioned FIR Was registered. According to the version disclosed in the FIR the accident had taken place at about 2.30 PM and FIR was registered at 4.40 PM. The allegations in the FIR is that the driver-respondent no1 Ravinder Kumar was driving the truck in a rash and negligent way. The afore-mentioned version disclosed in the FIR finds substantial corroboration from the statement made by Murari Lal PW 3 who was the co-worker traveling in the truck at the time of accident alongwith deceased Jaibir Singh. The author of the FIR Hirdey Narain PW although has not supported completely the version in the FIR when he appeared as a witness before the Tribunal. The Tribunal has also declined the request of the claimant- appellants to exhibit the statement made by him before the Criminal Court.In his statement Ex.P.4 before the criminal trial against Ravinder Kumar, driver- respondent no.1, Hirdey Narain had appeared as PW 1 and had stated that the accident had taken place on 16.7.1985 at 2.30 PM near village Jharsaintli and he was also a passenger in truck No. HRC 8253 which was being driven by Ravinder Kumar, driver- respondent. He has also stated that the accused escaped from the scene of occurrence and a number of people suffered injuries. He also accepted that he has recorded his statement with regard to the accident before the police which bears his signatures. The afore-mentioned statement made by Hirdey Narain fully supports the version and the manner of accident, sustaining of injuries and the death of deceased Jaibir Singh. It is well settled that when the

offending truck had turned turtle, it would be safe to apply the principles of res-ipsa loquitur. The evidence in the form of FIR ex.P.2 is supported by the version disclosed by PW 3 Murari Lal alongwith the statement of Hirdey Narain would establish beyond doubt that the accident had taken place and it was on account of rash and negligent driving of the driver- respondent no.1 Ravinder Kumar. In support of the afore-mentioned view reliance could be placed on a judgement of the Hon'ble Supreme Court in the case of Pushpabai Parshottam Udeshi and others v. M/'s Ranjit Ginning and Pressing Co. Pvt. Ltd. And another AIR 1977 SC 1735 and also a judgement of this Court in the case of Girdhari Lal vs. Radhey Shyam and others 1993(2) PLR 109 wherein it has been held that once a driver has been tried on account of rash and negligent driving it would be prima facie safe to conclude that the accident had occurred on account of rash and negligent driving of the driver. In the case of Pushpabai, the principles of res ipsa loquitur have been laid down which reads as under:

> " The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence....."
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> In the present case, the fact that the truck turned turtle is sufficient to

conclude that the driver- respondent no.1 was extremely negligent in driving the vehicle and therefore the findings of the Tribunal recorded on issue no.1 are liable to be reversed. Accordingly it is held that the accident on 16l7.1985 had taken place on account of rash and negligent driving of the driver- respondent no.1.

In respect of compensation it has come on record that Jaibir, deceased, used to get salary of Rs. 536.50 P.M. With 15 percent to 18 percent bonus. Mr. B.B.Sharma, Administrative Officer of the factory had appeared as PW 5 and he had deposed that the deceased used to earn Rs.400/- in addition as over-time. The afore-mentioned version with regard to income stands amply corroborated by the statement made by widow Smt. Raj Kumari, PW 2. She has corroborated the statement of Administrative Officer PW 3 in material principle by standing that the deceased used to hand over to her Rs.600/- p.m. And he used to earn Rs.300/- by selling milk from buffaloes etc. By taking into consideration the pre-ponderence of evidence, the monthly income of the deceased must be determined at Rs.900/0 p.m. Out of the afore-mentioned amount one third has to be deducted for his personal expenses which would bring the dependency to Rs./600/- p.m. The deceased was 31 years of age and according to the schedule attached to the Motor Vehicles Act,1988 (for brevity 'the 1988 Act') a multiplier of 17 in cases where the age of the deceased is more than 30 years and less than 35 years is required to be applied. Although the schedule has been attached with the 1988 Act yet it has been held by the Hon'ble Supreme Court in the case of Kaushnama Begum v. New India Assurance Co. Ltd. (2001)2 SCC 9 that the afore-mentioned schedule could also work as a safe guide to be applied to cases arising under the 1939 Act. Accordingly total compensation would work out to be Rs. 1,22,400 (600 x 12 x 17). The claimant-appellants must have spent expenses on cremation and accordingly Rs.5,000/- is awarded on that account. The claimant-appellants are also entitled to be compensated for the loss of love and affection of their bread earner and consortium of Rs. 20,000/- is awarded on that

account. The claimant- appellants would also be entitled to interest @ 10 percent from the date of filing the claim petition which was filed on 10.10.1986 till the date of its payment.

It has been pointed out that the liability of the insurance company respondent no.3 is limited to Rs. 1,50,000/- and the driver- respondent no9.1 and owner respondent no.2 of the offending truck are safely covered t that extent by the insurance cover produced on record as Ex.R.1. Accordingly it is held that the awarded amount is payable jointly and severally by the respondents and the insurance company shall be liable to disburse the awarded amount to the claimant-appellants.

The appeal is allowed in the above terms.

11.10.2006 **(M.M.Kumar)**
Judge

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